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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1503

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LEROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612.

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

ISSUE

The "Issue" as stated by petitioner is not acceptable in that it ignores and misstates undisputed evidence. The glaring error therein is the clause "prohibiting marriage between an administrator and a physical education teacher."

Marriage may act as a bar to employment only under strictly limited circumstances involving conflict of interest.

We state the issue as:

Is a School District regulation constitutionally permissible if it proscribes marriage in an administrator-teacher relationship causing a conflict of interest?

The Circuit Court said "YES".

RESPONDENTS' APPENDIX

At the end of this brief we print a supplementary Appendix. The matter first came before The Honorable Edward J. Devitt in District Court on a motion by Petitioner for a Temporary Injunction forbidding termination of petitioner's employment during the pendency of this action. The opinion of Judge Devitt is believed to be helpful and his Order is set forth fully in the Appendix.

As to Petitioner's Appendix the Complaint is printed at A-11 thereof. At Paragraph XVI the School Board's Findings are made a part of such Complaint, but are not printed with the Complaint. These Findings, however, can be found at A-3 of Petitioner's Appendix and are believed to be a correct and uncontroverted statement of the factual basis of this case.

STATEMENT OF THE CASE

The statement as submitted by Petitioner in his Petition needs amplification as important factual matters were determined by the District Court and the Court of Appeals to which no reference is made. The narrative of facts set forth in the Court of Appeals opinion is at Page 36 of the Petitioner's Appendix and is deemed to be a correct state-

ment. The Statement of Facts of petitioner is incorrect or incomplete and the Circuit Court's opinion is amplified in the following respects:

1. At the hearing before the School Board Petitioner introduced no witnesses. No complaint has been made as to the factual correctness of the School Board's Findings. By stipulation the parties adopted the School Board hearing transcript as the factual basis of the case and no oral testimony was taken in District Court, the case being submitted on the transcript.

2. As found by the Circuit Court and contrary to the Statement of Petitioner there was a policy in relation to marriage prior to the adoption of the present rule, A-37, line 8.

REPLY TO PETITIONER'S "REASONS FOR GRANTING THE WRIT"

Petitioner places a great reliance on *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 87 S. Ct. 1817 (1967). This case involves violation of a state ban on interracial marriage. It was held that miscegenation statutes preventing marriages solely on the basis of race are not permissible under the fourteenth amendment. In our case, however, marriage is not prohibited but is only an incident in determination of conflict of interest. If petitioner married one not a teacher in the school district the questioned rule is not applicable. If petitioner married a teacher in the same district but their work was in separate buildings the rule does not apply. Even if the petitioner and his wife worked in the same building but on an equal basis, conflict of interest would be an open question. Here,

however, we have marriage between a principal who is the direct supervisor of the teacher. The supervisory duties of the principal over his wife would include, among others, the evaluation of the work and programs of his wife, handling of disciplinary problems relating to his wife, her pupils and their parents, staff morale problems, evaluation of performance of duties, recommending teacher aids, assignment to non-classroom duties, assignment of classrooms, recommendations as to the curriculum and general supervision (A6).

Tinker et al v. Des Moines Independent Community School District et al, 89 S. Ct. 733, 393 U.S. 503 (1969) cited by petitioner relates to the right of free speech under the first amendment and has no relevancy here.

Petitioner claims that the contract of the petitioner should not be terminated on the basis of "anticipatory problems" but certainly most rules, regulations and laws seek to prevent rather than to permit and then punish. As stated in the Circuit Court opinion "the law should not block legitimate measures taken to anticipate problems and avert them" (A43). Further, the Findings of the School Board specifically set forth that a staff morale problem had occurred by reason of the principal-teacher combination (A9) and that the proper performance of duties by the petitioner has become increasingly difficult because of his marital situation.

Again we must come back to the factual situation with which we are concerned here, only with circumstances where an administrator is in supervisory control of his wife where a conflict of interest does arise and cannot be remedied by changing buildings or duties. See A38.

Petitioner complains because the wife rather than the

husband should have been allowed to resign. There were compelling reasons for the Board to dismiss the principal in that he had less senority, and violation of school rules is more disturbing if the rules broken are by the person who is charged with the duty of their enforcement.

The letter of the petitioner stating that his wife would resign if judicial proceedings were determined unfavorably to him, was not a workable solution as dismissal under Minnesota Law is effective at the close of the school year in which the Findings were filed (July, 1973). *Section 125.12 Subd. 6, Minnesota Statutes.* It was not possible to await the conclusion of legal proceedings (now in progress for over two years). Replacement was necessary for the 1973-74 school year.

There is protection for the teacher in that Minnesota Law provides that while the pendency of judicial proceedings is not grounds for postponement of the school board's order of dismissal, yet, if judicial review eventuates in reinstatement, the school district is required to pay the teacher all compensation withheld as a result of the termination. *Section 125.12, Subd. 11, Minnesota Statutes.* For this purpose a principal in Minnesota is considered in the same category as a teacher.

CONCLUSION

The facts of this case indicate no discrimination on the basis of sex or marital status. The sole question is whether or not reasonable men might conclude that it is unwise for a school to employ a school principal whose teacher wife is under his direct supervision and control. The board herein after full and careful investigation through a public hearing has so concluded. We submit that this determina-

tion is well within the discretionary power of the board and without violation of any constitutional, statutory or civil rights of the petitioner.

Respectfully submitted,

WINTER, NELSON & GROTH, LTD.
CALLAGHAN, NELSON & OBENLAND
By: JAMES F. NELSON AND
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/s/ NORVELL C. CALLAGHAN
Attorneys for Respondents

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

EDWARD KECKEISEN,

Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota et al,

Defendants.

6-73-Civ-158

MEMORANDUM & ORDER DENYING PRELIMINARY INJUNCTION

WILLIAM B. KORSTAD and BRUCE A. OLANDER, Attorneys for the Plaintiff.

JAMES F. NELSON, WINTER and NELSON, LTD., Glenwood, Minnesota, and NORVELL C. CALLAGHAN, CALLAGHAN AND NELSON, Glenwood, Minnesota, Attorneys for the Defendants.

Plaintiff school principal seeks a temporary restraining order enjoining Independent School District 612, Glenwood, Minnesota, from terminating his employment contract pursuant to its policy covering conflicts of interest in the employment of married couples. Plaintiff alleges violation of his Ninth and Fourteenth Amendment rights.

Jurisdiction is predicated upon the Civil Right Act, 28 U.S.C. §1343 and 42 U.S.C. §§1983 and 1985.

Plaintiff was hired as a secondary school principal by Independent School District 612 in 1970 and thereafter acquired tenure rights in accordance with M.S.A. §125.-12 (3). On June 12, 1972, the Board of Education of District 612 issued a written statement of policy, reflective of a previously existing unwritten policy, relative to the employment of spouses in conflict of interest situations, which reads:

> "Employment of married couples:
>
> It shall be the policy of the Board of Education not to employ the combination of husband and wife in the schools of the District where a conflict of interest could arise; said policy is to apply to the following:
>
> 1. Administrator—teacher relationship
>
> 2. Husband and wife combination in the same building
>
> 3. All other situations where a conflict of interest occurs
>
> Where the employment of a husband and wife in Independent School District 612 causes a conflict of interest to occur or should one of the above two conditions arise, that then either the husband or the wife shall resign. In the event neither the husband or the wife resigns within 10 days of notification of the conflict of interest or the occurrence of the above conditions that then and in that event the Board of Education shall determine which position should be terminated according to statute."

In December 1972, plaintiff married Lois Korbel, a physical education teacher employed in the secondary school of which plaintiff was principal. On January 12, 1973, the Board by its attorney notified plaintiffs of its married couples policy and requested his resignation. Plaintiff responded by letter on January 25, 1973, wherein he challenged the constitutionality of the married couples policy and indicated that neither he nor his wife intended to resign. However, he did state that should a court subsequently find the policy constitutional his wife preferred to resign.

Pursuant to M.S.A. §125.12 the School Board, on March 1, 1973, notified plaintiff that it proposed to terminate his contract. In accordance with the provisions of the aforementioned statute, plaintiff requested a public hearing before the Board. Such public hearing was held on March 29, 1973 wherein plaintiff was represented by his present counsel. By unanimous vote the Board made findings of fact and ordered the termination of plaintiff's contract effective at the close of the 1972-73 school year. The specific grounds for the contract termination were given as "persistent violation of school laws, rules, regulations or directives and more particularly policy of Independent School District 612 on employment of married couples." The School Board has hired a new principal and he has entered upon his duties preparatory to school opening this week.

Although plaintiff's motion is styled as one for a temporary restraining order, it is clear that the pertinent procedure does not differ functionally from that on application for a preliminary injunction where notice is given and an adversary hearing held. Wright and Miller, Feder-

al Practice and Procedure, §2951 (1973). Therefore, we construe the motion as one for a preliminary injunction.

Plaintiff has not made a strong showing that he would prevail on the merits. The School Board policy governing conflict of interest situations appears reasonable and not discriminatory toward married teachers. A reading of the pertinent cases does not persuade us that plaintiff has a reasonable probability of success at trial. But if the policy is found violative of constitutional principles, plaintiff will not be irreparably injured. By statute, M.S.A. 125.11, plaintiff is entitled to recover all compensation withheld.

The School Board would suffer irreparable injury if the relief is granted improvidently. It has already hired a new principal whom it must pay. Two principals could not function in the same job. Plaintiff has been dilatory in seeking equitable relief. He was notified of his termination in late March but the matter was not brought on for hearing till August 13 with last briefs filed on August 24. The status quo of the parties has changed significantly since March.

A complete state statutory procedure with interpretative judicial decisions is available for resolution of disputes of this kind involving Minnesota school boards and teachers. We give deference to the state court in matters of this kind and it is suggested that plaintiff may care to seek relief in accordance with state procedure.

Plaintiff's motion for an injunction is DENIED.

Dated: September 4, 1973.

/s/ EDWARD J. DEVITT
Chief Judge
United States District Court